

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

AMY S. WEBB

Claimant

VS.

IT'S DENTS OR US

Respondent

AND

TRUCK INSURANCE EXCHANGE

Insurance Carrier

Docket No. **250,094**

ORDER

Claimant appealed Administrative Law Judge Julie A.N. Sample's Award dated April 3, 2001. The Administrative Law Judge denied the claim because the claimant failed to sustain her burden of proof that she sustained accidental injury arising out of and in the course of her employment. The Board heard oral argument on September 4, 2001, by teleconference.

APPEARANCES

Claimant appeared by her attorney, Daniel L. Smith. Respondent and insurance carrier appeared by their attorney, Bren Abbott.

RECORD & STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

The primary issue raised on review by the claimant is whether she sustained a compensable injury during her employment with the respondent. At oral argument before

the Board, the claimant contended that, irrespective of the initial cause of her low back pain, her work activities aggravated and accelerated her low back condition.

If the claim is found compensable the claimant contends that she is entitled to additional temporary total disability compensation, payment of outstanding medical expenses, unauthorized medical and future medical benefits.

The respondent contends that the Administrative Law Judge's Award should be affirmed.

FINDINGS OF FACT & CONCLUSIONS OF LAW

Having reviewed the complete evidentiary record filed herein, and the stipulations of the parties, the Board finds that the Award of the Administrative Law Judge should be affirmed.

The Workers Compensation Act places the burden of proof upon claimant to establish his right to an award of compensation and to prove the conditions on which that right depends.¹ "Burden of proof" means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."²

The Award of the Administrative Law Judge sets out findings of fact and conclusions of law that are detailed, accurate and supported by the record. It is not necessary to repeat those findings and conclusions herein. The Board adopts the findings and conclusions of the Administrative Law Judge as its own as if specifically set forth herein except as hereinafter noted.

The Administrative Law Judge determined claimant had failed to meet her burden of proof to establish accidental injury as a result of either alleged slip and fall incident or as a result of a series of repetitive injuries. The claimant contends that irrespective of the initial cause of the onset of back problems, the evidence supports a finding that she sustained an aggravation of her low back condition because of her work activities. The claimant primarily relies on a sequence of events that allegedly occurred between her office visits with Dr. Coufal.

¹K.S.A. 44-510(a); *see also* Chandler v. Central Oil Corp., 253 Kan. 50, 853 P.2d 649 (1993) and Box v. Cessna Aircraft Co., 236 Kan. 237, 689 P.2d 871 (1984).

²K.S.A. 44-508(g). *See also* In re Estate of Robinson, 236 Kan. 431, 690 P.2d 1383 (1984).

The claimant initially saw Dr. Coufal on August 20, 1999, with only complaints of back pain. The claimant alleged after that visit she sustained a second slip and fall incident at work which resulted in an immediate worsening of her back pain with the new symptom of pain radiating into her leg.

Dr. Coufal's record of the August 20, 1999, office visit indicates that plain radiographs taken that day of the claimant's lumbosacral spine indicated an L5 pars defect bilaterally. The doctor ordered a CT scan to confirm those findings. A CT scan was done on August 26, 1999, and revealed an L5-S1 left paracentral disc herniation.

The Administrative Law Judge's Award indicated the second slip and fall incident occurred in late August. However, the claimant testified in the following manner:

Q. And had this fall occurred sometime between August 20th and the second time that you saw Dr. Coufal?

A. Yes, the first of September, yes.

Q. Then you saw Dr. Coufal then according to the records on about September 3rd, is that correct?

A. That's correct.³

The claimant testified that the second slip and fall incident occurred on September 1, 1999. The CT scan done August 26, 1999, revealed that claimant already had a herniated disc before the alleged second slip and fall incident. Moreover, Dr. Coufal testified that on September 3, 1999, he questioned claimant regarding any new injury or incident that might have occurred that could correlate with the new radiculopathy symptoms. The claimant did not report any new injury or incident. Dr. Coufal further testified that he was not impressed that there was a new event that occurred in the interim period.

The Board is not unmindful of the well established maxim of workers compensation law that uncontradicted evidence which is not improbable or unreasonable will not be disregarded unless it is shown to be untrustworthy.⁴ The Administrative Law Judge determined that there were simply too many inconsistencies in claimant's various versions of the source of her back complaints and as a result concluded claimant's testimony was untrustworthy. The Board agrees and notes that not only were the histories given the different doctors inconsistent but also finds it equally significant that claimant failed to

³ Transcript of Regular Hearing, January 4, 2001; p. 23.

⁴ Anderson v. Kinsley Sand & Gravel, Inc., 221 Kan. 191, 558 P.2d 146 (1976).

advise Dr. Coufal of the alleged second slip and fall incident. The Board finds, based upon the complete record, that the claimant has failed to prove she suffered accidental injury arising out of and in the course of her employment with the respondent.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Julie A.N. Sample dated April 3, 2001, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of September 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Daniel L. Smith, Attorney for Claimant
Bren Abbott, Attorney for Respondent and Insurance Carrier
Julie A.N. Sample, Administrative Law Judge
Philip S. Harness, Workers Compensation Director